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LEE PHAIK CHIEN v. DANG NGUT TING; MAJLIS PEGUAM (INTERVENER)

HIGH COURT MALAYA, KUALA LUMPUR
AMARJEET SINGH SERJIT SING J
[ORIGINATING SUMMONS NO: WA-17D-25-07-2023]
B 25 JULY 2025

Abstract – *(i) A finding of guilt requires a proper inquiry to be held. The Disciplinary Committee ('DC') cannot make a 'default judgment' or recommendation of 'no cause' without considering the inquisitorial nature of the proceedings and the right of the parties to be heard before making an adverse finding or stopping the inquiry. Similarly, the Disciplinary Board ('DB') cannot make a finding of guilt without an inquiry having been held; (ii) Disciplinary proceedings are quasi-criminal, and the standard of proof for misconduct must be beyond a reasonable doubt; (iii) The DB must provide written grounds, as mandatorily required by s. 103D(1) of the Legal Profession Act 1976, when rejecting the DC's findings.*

LEGAL PROFESSION: *Disciplinary proceedings – Disciplinary Committee – Complaint by client against advocate and solicitor for fraudulent transfer of property – Hearing before Disciplinary Committee ('DC') fixed but adjourned from time to time due to complainant's non-appearance – DC decided not to proceed further with inquiry and recommended to Disciplinary Board ('DB') that no cause existed for disciplinary action – DB disagreed with DC's findings and recommendations – DB imposed on advocate and solicitors with punishment of fine of RM20,000 – Whether there was breach of natural justice – Whether advocate and solicitor accorded right to be heard – Whether alleged misconduct proven beyond reasonable doubt – Whether DB provided written grounds – Legal Profession Act 1976, ss. 94(3) & 103D(1)*

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The respondent had approached the appellant, an advocate and solicitor, to secure a loan. The appellant then introduced the respondent to an illegal moneylender ('Khor'), who was willing to provide a loan of RM350,000 with 4% interest per month. In order to disguise the unlawful nature of the transaction, a sale and purchase agreement ('SPA') was entered into between the respondent, as the vendor, and Khor, as the purchaser for a property. Although the transfer form was signed, the appellant told Khor not to transfer the property without her prior consent. The respondent only received RM27,000, instead of RM350,000, and the property was transferred to Khor without prior notice to the respondent; the appellant did not inform her of this. This prompted the respondent to lodge a complaint of misconduct against the appellant. The Disciplinary Board ('DB') set up a Disciplinary Committee ('DC') to investigate the said complaint. The hearing before the DC was fixed but subsequently adjourned from time to time due to the

respondent's non-appearance. The DC, on account of the respondent's failures to turn up, decided that, there was no use to proceed further with the inquiry and, without hearing the respondent, made a recommendation that 'no cause exists for disciplinary action' and submitted the same to the DB. The DB, however, disagreed with the DC's findings and recommendations, and proceeded to issue a notice to the appellant to be present for a hearing before the DB. On the fixed date, the DB, after considering the DC's report on the complaint and the appellant's written submission, rejected the DC's finding of no liability. The appellant was imposed with a punishment of a fine of RM20,000. Hence, the present appeal. In support of her appeal, the appellant submitted that: (i) there was a breach of natural justice as she was deprived of the opportunity to challenge, confront and contradict the complaint brought against her by the respondent; (ii) the DB erred by failing to cross the threshold of the standard of proof, which was beyond a reasonable doubt, required to show that the appellant had misconducted herself within s. 94(3) of the Legal Profession Act 1976 ('Act'); and (iii) the DB failed to comply with the mandatory requirement of s. 103D(1) of the Act, requiring the DB to provide written grounds for any decision where it disagrees with the recommendations of the DC.

Held (dismissing appeal):

(1a) The DC did not conduct an inquiry. What the DC did was akin to a default judgment. The DC did not consider (i) rr. 16, 18(5)(b) and 18(7) of the Legal Profession (Disciplinary Proceedings) Rules 2017 ('Rules') and also the fact that the disciplinary process was deemed to be inquisitorial within the terms of s. 103B; and (ii) the fact that the appellant was sick on the last day of the hearing. The appellant had otherwise attended all proceedings. The appellant ought to be given an opportunity to be heard on the course of action the DC intended to take before suddenly deciding the way they did. (para 25)

(1b) The DB acted on the DC's report, rejected the DC's findings and recommendation and was of the view that: (i) a finding of guilt ought to be made and gave the appellant the right to be heard before making this adverse finding; and (ii) the appropriate punishment was a fine of RM20,000 and before this fine was imposed, also heard the appellant on the proposed fine. The DB could not have made a finding of guilt when no inquiry was ever held. Any finding of guilt would suffer from the same infirmities in the DC's findings and recommendation, specifically the right to be heard. (paras 28 & 29)

(2) The duty of the DC, and subsequently the DB, was to satisfy themselves that the complaint was proved against the appellant on the requisite standard of proof. Disciplinary proceedings are quasi-criminal in nature and the standard of proving misconduct is on a standard of beyond a reasonable doubt. A finding of guilt can only be arrived at if an inquiry is held and the act complained of has been

proven beyond a reasonable doubt. There was no written instruction of the duty to inform the respondent that the transfer of the property was to be proceeded with; it was an alleged oral instruction. The only place the alleged instruction appeared was from the complaint. This allegation was never proven before the DC or the DB in any way whatsoever. The respondent did not make any appearance at the several hearings of the inquiry, although served with the notice to appear. In the circumstances, such instruction was never proven. The finding of guilt could not stand. (paras 31, 33 & 34)

(3) The DB did not comply with s. 103D(1) of the Act, which mandatorily required the DB to record their reasons for rejecting the finding or recommendation of the DC. The failure to satisfy this mandatory requirement was fatal and would result in the DB's order being set aside. (para 35)

Case(s) referred to:

Dato' Amelda Md Din v. Majlis Peguam Malaysia [2018] 6 CLJ 602 HC ***(refd)***
Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Majlis Peguam (Intervener) [2018] 2 CLJ 1 FC ***(refd)***
Majlis Peguam Malaysia v. Rajehgopal Velu & Anor [2017] 2 CLJ 493 FC ***(refd)***
Majlis Peguam v. Cecil Wilbert Mohanaraj Abraham [2018] 9 CLJ 622 CA ***(refd)***
Majlis Peguam v. Dato' Seri Dr Muhammad Shafee Abdullah [2016] 8 CLJ 749 FC ***(refd)***
Sithradevi Nagalingam v. Masdar Darman & Anor; Majlis Peguam Malaysia (Intervener) [2021] 3 CLJ 677 FC ***(refd)***

Legislation referred to:

Legal Profession (Disciplinary Proceedings) Rules 2017, rr. 16, 18(5)(b), (7), 24
Legal Profession Act 1976, ss. 93, 94(3), 99(1), 100, 103B(1), (1A), 103C(1), 103D(1), (2), (3), (4), 103E(1)

For the appellant - Razlan Hadri Zulkifli & Edmund Choi Sing Eu; M/s Lee Phaik Chien & Co
For the intervener - Karen Isabel M Wilfred; M/s Wilfred

Reported by Najib Tamby

JUDGMENT

Amarjeet Singh Serjit Singh J:

Introduction

[1] The appellant, Lee Phaik Chien, is an advocate and solicitor. A written complaint of misconduct was made against her by the respondent, a client of hers. The Disciplinary Committee("DC") that was set up to inquire into the written complaint recommended to the Advocates and Solicitors Disciplinary Board ("DB") that there was no cause for disciplinary action on the written complaint and that the appellant be reprimanded and censured for her behaviour towards the members of the DC at one of the hearings under s. 103C(1) of the Legal Profession Act 1976 ("LPA").

[2] On 24 June 2023, the DB acting under the provisions of s. 103E of the LPA rejected the findings and recommendations of the DC and, after hearing to the appellant, found the written complaint proven and proceeded to make an order that the appellant pay a fine of RM20,000 ("the DB's order").

[3] The appellant appealed to this court against the DB's order pursuant to s. 103E(1) of the LPA, seeking to set aside the DB's order and the return of the fine which had been paid. The Bar Council intervened and opposed the appeal. On 22 April 2025, I allowed the appeal, set aside the DB's order, and ordered that the fine be refunded. This judgment contains the reasons for my decision.

The Complaint

[4] The complaint is a written complaint as required by s. 99(1) of the LPA. The respondent alleged that to succour a loan, she approached the appellant at the latter's legal office. The appellant introduced her to an illegal moneylender, Khor Hun Thong ("Khor"), who was willing to provide a loan of RM350,000 with 4% interest per month. In order to disguise the unlawful nature of the transaction, a sale and purchase agreement was entered into between the respondent as the vendor and Khor as the purchaser for a property held under HSM No. 772, Lot No. 2507, Mukim 05, Daerah Seberang Perai Selatan, Negeri Pulau Pinang bearing an address at No. 1351, Jalan Sungai Duri, 14200 Sungai Bakap, Pulau Pinang ("the property"). The transfer forms, *ie*, Form 14A for the property, were also signed. The appellant said that she informed Khor not to transfer the property without her prior consent.

[5] Contrary to the above understanding, the respondent said that she only received RM27,000 instead of RM350,000. Then, sometime in October 2016, the said property was transferred to Khor without prior notice to the respondent. The respondent said that the appellant also did not inform her that the property had been transferred in Khor's name. The respondent lodged a police report on the matter. The respondent alleged that she had instructed the appellant: (i) to hold on to the title and the executed Form 14A as collateral for the repayment of the loan; and (ii) to inform by prior notice. The respondent alleged that the appellant did not give her prior notice before the transfer of the property and had assisted in the fraudulent transfer of the property.

[6] The DB set up a DC to investigate the complaint under the provisions of the LPA. The hearing before the DC was fixed on 21 January 2022, and subsequently adjourned from time to time due to the non-appearance of the complainant.

[7] On 13 June 2022, the DC, on account of the respondent complainant failing to turn up despite being given ample opportunity decided that "there is no usefulness to proceed any further with the inquiry" and without hearing the respondent made a recommendation that "no cause exists for disciplinary action" and submitted the same to the DB. The DB, having read the report of the DC, disagreed with the DC's findings and recommendations.

[8] On 2 June 2023, the DB issued a notice to the appellant pursuant to ss. 103D(3) and 103D(4) of the LPA to be present for a hearing before the DB on 24 June 2023. On that date, the DB proceeded to consider:

(i) the report made by the DC on the written complaint; and

(ii) written submission of the appellant received on 22 June 2023;

and rejected the DC's finding of no liability. The DC also rejected the recommendation of punishment in respect of the appellant's behaviour towards the members of the DC during the hearing on 10 March 2022, as it was not part of the complaint.

[9] The issue in the instant appeal concerns the rejection of the finding of no liability by the DC. As a result of this finding, the DB heard the appellant pursuant to ss. 103D(3) and 103D(4) of the LPA before imposing the punishment of a fine of RM20,000.

Grounds Of Appeal

[10] The appellant advanced the following grounds against the DB's order:

(i) there was a breach of natural justice effected on the appellant as she was deprived of the opportunity to challenge, confront, and contradict the complaint brought against her by the complainant;

(ii) the DB erred by failing to cross the threshold of the standard of proof, which is beyond a reasonable doubt, required to show that the appellant had misconducted herself within s. 94(3) of the LPA; and

(iii) the DB had failed to comply with the mandatory requirement of s. 103D(1) of the LPA, which makes it a requirement of the law for the DB to provide written grounds for any decision where it disagrees with the recommendations of the DC.

Law On Disciplinary Proceedings

[11] The general scheme of the disciplinary proceedings under the LPA is as follows. The body empowered to carry out disciplinary action against an advocate and solicitor is the DB, which is established under s. 93 of the LPA. Section 99(1) of the LPA provides that any disciplinary action against an advocate and solicitor is to be initiated pursuant to a written complaint made to the DB. On receipt of the written complaint, the DB must comply with the provisions of s. 100 of the LPA.

[12] Where there is merit in the written complaint and the advocate and solicitor: (i) fails to comply with the request of the DB to furnish a written explanation together with supporting documents within the time given; or (ii) gives a written explanation which upon consideration, the DB is of the view that the complaint has merit, the DB shall proceed to appoint a DC.

[13] The function of the DC under ss. 103B(1) and (1A) of the LPA is to inquire into the written complaint and make its findings and keep a note of the proceedings ("notes of proceedings"). Upon conclusion of the inquiry, the DC is required by s. 103C(1) of the LPA to record its findings in relation to the facts of the case and, according to those facts, shall determine and make any one of the following recommendations:

(i) no cause for disciplinary action exists and the complaint be dismissed;

(ii) cause for disciplinary action exists but is not of sufficient gravity to warrant any punishment other than reprimand or censure, or that the circumstances are such that a reprimand or censure be made; and

(iii) cause for disciplinary action exists and is of sufficient gravity to warrant the following penalties or punishments – reprimand or censure, fine not exceeding RM50,000, suspension from practise not exceeding five years, struck off the rolls.

[14] The report of the DC is then submitted to the DB. The report consists of the written complaint, notes of proceedings, documents, and the findings and the recommendations of the DC. The DB's function upon receiving the report of the DC is provided in s. 103D of the LPA and is as follows (relevant provisions only):

(i) after consideration of the report of the DC, the DB may make an order affirming or rejecting the finding or recommendation, and if the DB rejects the finding or recommendation of the DC, the DB shall record the reason for the rejection (s. 103D(1) of the LPA);

(ii) the DB may, in appropriate cases, impose a greater or lesser penalty or punishment than that recommended by the DC (s. 103D(2) of the LPA);

(iii) where the DB does not agree with the finding or recommendation of the DC, the DB shall make such other order as it deems just (s. 103D(3) of the LPA); and

(iv) before the DB makes an order that is likely to be adverse against an advocate and solicitor under ss. 103D(2) or 103D(3), the DB shall notify the advocate and solicitor of its intention to do so and give him a reasonable opportunity to be heard (s. 103D(4) of the LPA).

[15] Lastly, s. 103E(1) of the LPA provides that any party aggrieved by a final order of the DB shall have the right to appeal to the High Court.

Analysis And Decision

[16] It is well-settled that, as a general rule, the courts do not intervene in matters concerning professional discipline. In respect of the legal profession, that role is entrusted on the Disciplinary Board established to regulate and discipline members of the legal profession. All that is required is that the disciplinary body acts fairly in carrying out its duties, and the hearing is conducted thoroughly with due deliberation and understanding given to the facts of the complaint.

[17] The limited circumstances where the High Court can interfere with the exercise of power by the disciplinary body were summarised by the Federal Court in *Majlis Peguam v. Dato' Seri Dr Muhammad Shafee Abdullah* [2016] 8 CLJ 749 after a review of the relevant case law, as follows:

(i) the DC and/or DB erred in principle;

(ii) overlooked, misconceived, or disregarded some material matter of fact; and

(iii) failed to act judicially;

and in *Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Majlis Peguam (Intervener)* [2018] 2 CLJ 1; [2018] 2 MLJ 265, the Federal Court reiterated the limited circumstances under which appellate intervention may be justified on the finding of facts and the recommendations made by the DC as follows:

> [23] ... The courts should only interfere with the finding of facts and recommendations of the DC in the following limited circumstances, *ie*:
>
> (i) when the findings are manifestly perverse;
>
> (ii) failed to give due consideration to the facts of the case and the conduct of the solicitor complained against; and
>
> (iii) where there has been a breach of natural justice, *ie*, right to be heard and bias.

[18] It is also trite that a Disciplinary Committee of a professional body is entitled to conduct its disciplinary hearing in respect its member in whatever way it deems appropriate provided that the method or manner it adopts is not in breach of any specific provisions of the relevant statutes or regulations and does not result in a denial of justice to the member concerned. The advocate and solicitor must be given an opportunity to meet every relevant ingredient of the complaint and must be given the opportunity to contradict them (see *Majlis Peguam Malaysia v. Rajehgopal Velu & Anor* [2017] 2 CLJ 493; [2017] 1 MLJ 596).

Decision

[19] After considering the facts and applying the law, I was convinced of the following:

(i) the DC had failed to accord the respondent a right to be heard by deciding the complaint without giving the appellant an opportunity to be heard. This same flaw is carried into the decision of the DB in making the DB's order; and

(ii) the DB found the appellant guilty when it had failed to satisfy the standard of proof, which is beyond a reasonable doubt.

[20] Both ground (i) and (ii) in the preceding paragraph fall within the limited circumstances, this court is justified to interfere with the DB's order. As a result, I allowed the appeal. I will now elaborate on the grounds for allowing the appeal.

Breach Of The Right To Be Heard By The

[21] The notes of proceedings of the DC revels until 13 June 2022, the last of the hearing dates, the inquiry had not even begun. This was followed with the "findings of fact and recommendation" dated 28 October 2022. It suffices to briefly describe the contents of the "findings of fact and recommendation", which can be severed into separate parts as follows:

(i) a summary of the contents of the written complaint and highlighting the part where the respondent said that she had given strict instructions to the appellant not to execute the transfer of the property, using the Form 14, which she had executed in favour of Khor, without obtaining her consent;

(ii) a summary of the written explanation of the appellant, where the appellant maintained that the SPA was genuine and not a sham agreement disguised as a money-lending transaction;

(iii) the DC's decision not to adjourn the inquiry since the respondent, who was vital for the inquiry, appeared not keen to proceed with her complaint. The absence of the respondent, according to the DC, "unable us to make any justification or find any merits in her complaint against the appellant" and that there is no usefulness to proceed any further with the inquiry; and

(iv) the recommendation in the following words, "no cause of disciplinary action exists and that the complaint be dismissed".

[22] The specific rules governing the proceedings before the DC is provided in the Legal Profession (Disciplinary Proceedings) Rules 2017 ("the Rules"). Rule 16 of the Rules provides as follows:

A Where the complainant or the advocate and solicitor concerned or both fail to appear before the Disciplinary Committee on the date fixed for the hearing of the complaint, the Disciplinary Committee may, upon being satisfied that Rule 14 has been complied with, proceed to hear the complaint in the absence of such person, without further notice to such person and make its determinations and recommendations to the
B Disciplinary Board.

[23] Rule 18 of the Rules concerns proceedings of the DC. The relevant subrules of r. 18 are reproduced below:

(4) All evidence shall be given separately under oath, administered, and
C recorded by the chairman.

(5) The Chairman shall:

(a) direct the complainant to present his case, and the substance of the evidence given shall be recorded, and the documents tendered shall be marked; and

D

(b) If the complainant or his legal representative is absent, proceed with the hearing under Rule 16 on the record of complaint and shall call upon the advocate and solicitor concerned to respond to the complaint.

(6) At any hearing before the disciplinary committee:

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(a) the advocate and solicitor concerned may cross-examine the complainant and his witnesses, if any, where they have given their evidence in relation to the complaint; and

(b) the complainant may cross-examine the advocate and solicitor concerned and his witness, if any, where they have given their
F evidence in relation to the complaint.

(7) The Chairman or members of the Committee may ask any question, or request the attendance of any person as a witness, or for the production of anything or documents, as the Committee may reasonably consider relevant to the inquiry to clarify any matter arising out of the
G evidence.

...

(13) For purposes of avoidance of doubt, the disciplinary process under the Act is deemed to be inquisitorial within the terms of Section 103B.

H **[24]** Then there is r. 24 of the Rules, which provides that non-compliance with any rule does not vitiate the proceedings unless such non-compliance has occasioned a miscarriage of justice:

If at any stage in the course of or in connection with any proceedings, by reason of anything done or undone, there has been a failure to comply
I with any of the requirements of these Rules, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings or any finding, direction or decision made unless such non-compliance has occasioned a miscarriage of justice.

[25] The crucial fact is that the DC did not conduct an inquiry. The DC was of the view that since the respondent was not interested, there was no useful purpose to proceed with the inquiry. What the DC did was akin to a default judgment. The DC did not consider rr. 16, 18(5)(b), and 18(7) of the Rules, and the fact that the disciplinary process is deemed to be inquisitorial within the terms of s. 103B. The DC did not consider the fact that the appellant was sick on 13 June 2022, the last day of the hearing. The appellant had otherwise attended all proceedings. The appellant ought to have been given an opportunity to be heard on the course of action the DC intended to take before suddenly deciding the way they did.

[26] In the circumstances, I hold that the DC failed to consider the relevant provisions of the Rules regarding their function as shown above, decided the matter as though it was a judgment in default, and did not carry out an inquiry into the complaint, although the complainant was absent. I also hold that the appellant was denied the right to be heard on the complaint.

[27] That denial of the right to be heard is carried to the DB's function to consider the "finding and recommendation" as set out in s. 103D of the LPA. The relevant provisions of s. 103D are reproduced for clarity sake:

(i) after consideration of the report of the Disciplinary Committee, the Disciplinary Board may make an order affirming or rejecting the finding or recommendation of the Disciplinary Committee, and if the Disciplinary Board rejects the finding or recommendation of the Disciplinary Committee, the Disciplinary Board shall record the reason for the rejection;

(ii) the Disciplinary Board may, in appropriate cases, impose a greater or lesser penalty or punishment than that recommended by the disciplinary committee;

(iii) where the Disciplinary Board does not agree with the finding or recommendation of the disciplinary committee, the Disciplinary Board shall make such other order as it deems just; and

(iv) before the Disciplinary Board makes an order that is likely to be adverse against an advocate and solicitor under sub-s. (2) or (3), it shall notify the advocate and solicitor of its intention to do so and give him a reasonable opportunity to be heard.

[28] It is not in dispute that the DB acted on the report of the DC. It rejected the finding and recommendation and did two things:

(i) the DB was of the view that a finding of guilt ought to be made and gave the appellant the right to be heard before making this adverse finding; and

(ii) the DB was of the view that the appropriate punishment was a fine of RM20,000, and before this fine was imposed, also heard the appellant on the proposed fine.

[29] The point is this: the DB could not have made a finding of guilt when no inquiry was ever held. Any finding of guilt would suffer from the same infirmities in the DC's finding and recommendation (see para. [25] above), specifically the right to be heard.

[30] On this ground alone, the appeal is allowed.

The Guilt Was Not Proven Beyond A Reasonable Doubt

[31] The duty of the DC and subsequently the DB is to satisfy themselves that the complaint was proved against the appellant on the requisite standard of proof. Disciplinary proceedings are quasi-criminal in nature, and the standard of proving misconduct is on a standard of beyond a reasonable doubt (*Majlis Peguam v. Cecil Wilbert Mohanaraj Abraham* [2018] 9 CLJ 622 and *Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Majlis Peguam (Intervener)* [2018] 2 CLJ 1).

[32] The decision of the Federal Court in *Sithradevi Nagalingam v. Masdar Darman & Anor; Majlis Peguam Malaysia (Intervener)* [2021] 3 CLJ 677 reiterated that the approach of the DC is to determine; firstly, whether the acts alleged in the complaint had been proved beyond reasonable doubt, and secondly, whether the appellant in relation to those facts, was guilty of such conduct.

[33] As pointed out above, a finding of guilt can only be arrived at if an inquiry is held and the act complained of has been proven beyond a reasonable doubt. What happened before the DB was that, based on the report of the DC, the DB arrived at the following finding of fact:

(i) you have disregarded your client's interests and strict instructions when you failed to inform the complainant that you proceeded with the registration of the transfer of the property; and

(ii) you had prepared a document disguised as a SPA when the records show that the terms of the SPA is of a money-lending transaction.

[34] There is no written instruction of the duty to inform the respondent that the transfer of property is to be proceeded with. It was an alleged oral instruction. The only place the alleged instruction appears is from the complaint. This allegation was never proven before the DC or DB in any way whatsoever. The respondent did not make any appearance at the several hearings of the inquiry, although served with the notice to appear. In the circumstances, such instruction was never proven. The finding of guilt cannot, in the circumstances, stand.

[35] In this regard, the DB did not comply with s. 103D(1) of the LPA, which requires the DB to record their reasons for rejecting the finding or recommendation of the DC. This mandatory requirement was not fulfilled. The failure to satisfy the mandatory requirement is fatal and will result in the DB's order being set aside (see *Dato' Amelda Md Din v. Majlis Peguam Malaysia* [2018] 6 CLJ 602; [2018] 8 MLJ 432).

[36] Another reason for the finding that the appellant had prepared a document disguised as a SPA when the records show that the terms of the SPA is of a money-lending transaction cannot stand because this fact is not a complaint made by the respondent. The respondent knew that the SPA was a sham SPA as she was a party to the scheme to disguise in the form of the SPA a money-lending transaction. What is not the complaint is to be disregarded.

[37] In addition to the above ground, the appeal is allowed on this separate ground.